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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 697/2015*, **

Communication submitted by:	X (not represented by counsel) et al.
Alleged victims:	The complainant and Y (his wife) and their daughter, Z
State party:	Switzerland
Date of complaint:	14 August 2015 (initial submission)
Date of present decision:	25 November 2016
Subject matter:	Deportation to Belgium
Procedural issue:	None
Substantive issues:	Deportation of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture
Article of the Covenant:	3

1.1 The complainant is X, a Rwandan national. He also submits the complaint on behalf of his wife, Y, and their daughter, Z, both also Rwandan nationals. The family is currently being held at a centre for asylum seekers in Oberbuchsiten (canton of Solothurn, Switzerland), pending their deportation to Belgium. The complainant is subject to an international arrest warrant issued by INTERPOL at the request of Rwanda. He claims that his deportation and that of his wife and daughter to Belgium by Switzerland would constitute a violation of the State party's obligations under article 3 of the Convention. The complainant is not represented.

1.2 In accordance with article 22 (3) of the Convention, the Committee brought the complaint to the State party's attention on 14 August 2015. At the same time, in application of rule 114 (1) of its rules of procedure, the Committee asked the State party not to expel

* Adopted by the Committee at its fifty-ninth session (7 November-7 December 2016).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Claude Heller Rouassant, Jens Modvig and Kening Zhang.

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the complainant and his family to Belgium while his complaint was being considered by the Committee.

1.3 On 20 August 2015, the State party informed the Committee that, in accordance with its established procedure, the State Secretariat for Migration had requested the competent authority not to take any steps to deport the complainant and his family, so that they are assured of remaining in Switzerland pending consideration of their complaint by the Committee.

1.4 The applicant and his family remain at the Oberbuchsiten centre for asylum seekers; the complainant's minor daughter is not attending school.

The facts as submitted by the complainant

2.1 The complainant describes himself as a prominent political figure in Rwanda. As well as being a politician, he is also a diplomat. As a diplomatic passport holder, he has, in the performance of his duties, always obtained Schengen visas and travelled regularly to both Belgium and other Schengen area countries on official business. His current visa expired in July 2016.

2.2 As a member of the liberal wing of his party, the complainant expressed his opposition to the current President of Rwanda, Paul Kagamé, whom he accused of wanting to amend the Constitution in order to remove the provision barring a president from seeking a third term of office. The complainant was subsequently disowned by the President, who dismissed him from his post as minister. Furthermore, as the complainant was seen as a permanent threat, he was excluded from the political life of the country and from the political affairs of his party, in particular. The complainant was subsequently appointed ambassador to various African countries. At a special meeting of the complainant's political party convened on 29 March 2015 to discuss the constitutional amendment in question, the complainant was recalled to Rwanda for questioning by his superiors. However, the complainant's suspicions were aroused, and he decided not to return to Rwanda.

2.3 A warrant was issued through INTERPOL at Rwanda's request for the arrest of the complainant on charges of embezzlement and theft.

2.4 The complainant, together with his wife and daughter, arrived in Switzerland on 3 April 2015. On 7 April 2015, the family filed an application for asylum at the registration and processing centre in Kreuzlingen. On 9 April 2015, they were interviewed in order to ascertain their identities and their travel route. A comparison with data stored in the Visa Information System showed that the complainant and his family had obtained Belgian visas. Therefore, in accordance with Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 (Dublin III Regulation), the Swiss State Secretariat for Migration requested the Belgian authorities to take charge of the complainant and his family as from 29 April 2015. The Belgian authorities accepted the request on 5 May 2015.

2.5 On 13 May 2015, the State Secretariat for Migration (SEM) declined to consider the complainant's asylum application and ordered that he and his wife and daughter should be deported from Switzerland to Belgium, under article 31 a (1) (b) of the Asylum Act.[1] The complainant appealed the decision to the Federal Administrative Court; the Court rejected his appeal and upheld the State Secretariat's ruling on 10 June 2015. As the Court's decision was final, the State Secretariat's order became enforceable.

[1] Article 31 a of the Asylum Act provides: "(1) As a general rule, SEM shall not entertain an asylum application if the asylum seeker: … (b) is able to travel to a third country that is responsible under an international agreement for conducting the asylum and removal procedures".

The complaint

3.1 The complainant points out that the decision of the Swiss authorities to deport him to Belgium rests on a mere presumption that the common European asylum system is based on the principle of mutual trust, according to which all member States are presumed to observe fundamental rights. However, according to the complainant, there are exceptions to this principle and, notwithstanding such a presumption, the State party was under an obligation to conduct an individual assessment of his case and the risk he faced, which it failed to do. He adds that the fact that his appeal to the Federal Administrative Court was considered by three judges shows that it was manifestly well founded, within the meaning of article 111 (e) of the Asylum Act, and that the first judge certainly found it difficult to persuade his colleagues otherwise.

3.2 The complainant maintains that there are significant factors that weigh against his deportation to Belgium. He points out that an international arrest warrant has been issued for him through INTERPOL at the request of the Rwandan authorities, who believe that the complainant is in Belgium. The complainant recalls the close historical ties that exist between Belgium and Rwanda and refers to his personal fear of being subjected to treatment contrary to the Convention in Belgium, not because of a systematic violation by Belgium of its international commitments but for reasons relating to the complainant's personal profile. The complainant refers to cases of genocide suspects living in Belgium. He cites the case of Juvénal Uwilingiyimana, a former minister for commerce in Rwanda, who was killed in Brussels in 2008, and the case of Regina Uwamaliya, who was also killed in Brussels in 2000. The complainant also refers to a news report published on 6 August 2015 and entitled "Des escadrons de la mort venus du Rwanda actifs en Belgique?" (Are death squads from Rwanda operating in Belgium?), according to which the Belgian security service had provided temporary or permanent protection for several individuals, including Faustin Twagiramungu, the former Rwandan Prime Minister, a possible target of death threats in May 2014.[2]

3.3 The complainant affirms that Rwanda is able to carry out secret missions on Belgian soil. He further states that, by abandoning his diplomatic post, he committed high treason, an offence punishable by hanging in Rwanda.

3.4 Apart from his fear for his safety at the hands of the Rwandan authorities, the complainant is concerned that he will be at risk of revenge attacks by former political opponents living in Belgium who are genocide suspects. As a member of the Government of Rwanda, the complainant helped file a number of complaints so that the Belgian authorities could prosecute persons suspected of participating in the Rwandan genocide. The two main parties in exile, the Forces démocratiques unifies (Unified Democratic Forces) and the Congrès national rwandais (Rwanda National Congress), are based mainly in Belgium and South Africa. The complainant therefore claims that, should he be forcibly returned to Belgium, he would be at risk of reprisals by those persons, who would imperil his safety and that of his family. In Belgium, he would have to remain constantly vigilant in his daily life, refrain from going to supermarkets, cafes and restaurants and from using public transport, while his children would be unable to attend school. He states that the Belgian police are unable to ensure his safety or that of his family, since they generally intervene only after an offence has been committed.

3.5 The complainant adds that, since his arrival in Switzerland, he has contacted his friends the Belgian ambassadors to Ethiopia and Rwanda, with whom he had developed ties and thanks to whose help his family had been able to obtain Belgian visas easily. However, both ambassadors informed him that he should no longer count on their support. For this

[2] https://www.rtbf.be/info/monde/afrique/detail_des-escadrons-de-la-mort-venus-du-rwanda-actifs-en-belgique?id=9048522.

reason, the complainant is concerned that his asylum application will not be examined impartially.

State party's observations on admissibility and the merits

4.1 The State party submitted its observations on the admissibility and the merits of the complaint on 11 February 2016. It began by pointing out that, when a complainant can travel to a third State that has jurisdiction, the State Secretariat for Migration will not consider an asylum application (article 31 a of the Asylum Act) unless the transfer of the individual concerned to the responsible State under the Dublin III Regulation breaches the obligations of Switzerland under international conventions, in particular the principle of non-refoulement, in which case the State Secretariat is obliged to use the sovereignty clause and to consider the application (Federal Administrative Court decision of 10 May 2011, ATAF 2011/9, preambular paras. 5-7).

4.2 The State party rejects the complainant's arguments, according to which the domestic authorities relied on the presumption that Belgium would respect fundamental rights, without making an individual assessment of his situation before deciding on his return to Belgium. When, in accordance with the Dublin III Regulation, Switzerland is not responsible for considering an asylum application, the authorities are required to ascertain that the transfer to the designated European country is lawful. In so doing, they must consider in particular whether the deportation in question may expose the person concerned to a risk of treatment prohibited under article 3 of the Convention or article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

4.3 According to the State party, the State Secretariat for Migration and the Federal Administrative Court considered the complainant's arguments carefully. These bodies took into account the complainant's particular political profile and his fears about being transferred to Belgium. Only after it had weighed the grounds cited did the Administrative Court find that the complainant and his family had failed to provide sufficient evidence to show that they would face a severe and substantiated risk of prohibited treatment in Belgium because of an unwillingness or inability on the part of the Belgian police to protect them, should the complainant be threatened. The Court also noted that the complainant had failed to adduce evidence sufficient to demonstrate that the Belgian authorities would not respect the principle of non-refoulement.

4.4 With regard to the complainant's argument that the Federal Administrative Court ruled on his appeal sitting in a three-judge bench, the State party states that, according to article 21 (1) of the Federal Administrative Court Act (LTAF, RS 173.32), courts generally decide on cases sitting in a three-judge formation. Article 23 of the Act provides that the investigating judge shall decide on certain — enumerated — cases sitting in a single judge formation. Article 111 of the Asylum Act specifies the cases that may be heard by a single judge. As the present case comes within none of the categories listed, the general rule set out in article 21 (1) of the Federal Administrative Court Act is applicable. That is why the ruling of the Federal Administrative Court was rendered by three judges. The complainant's arguments are therefore without merit.

4.5 The State party further submits that the complainant has failed to demonstrate that he runs a personal, present and substantial risk of being subjected to treatment contrary to the Convention in Belgium.[3] According to the State party, it is not disputed that, since the complainant and his family have been granted Schengen visas by the Belgian authorities, Belgium is in principle responsible for processing their asylum application, pursuant to article 12 (1) of the Dublin III Regulation. During their hearing before the State Secretariat

[3] The State party refers to communication No. 635/2014, *M.K. and B.B. v. Switzerland*, decision adopted on 26 November 2015.

for Migration, the complainant and the members of his family were informed that they would probably be transferred to Belgium and were invited to cite any obstacles to such a transfer. The complainant then stated spontaneously that he was opposed to the transfer because perpetrators of the Rwandan genocide were present in Belgium. He made no mention of the additional grounds that he raised later in the proceedings. For her part, his wife stated that many Rwandans were living in Belgium and that they held assemblies and demonstrations there and that she wished to live in peace and have no further involvement in politics.

4.6 According to the State party, the complainant also referred to several groups of people who were likely to have a grudge against him — persons involved in the genocide, opponents of the regime and members of the regime — but he did not provide any details of why such persons would wish to do him harm. Furthermore, nothing in the complainant's statements or his written submissions indicates that he experienced any problems during previous visits to Belgium or faced any serious threats when there. In the State party's view, the complainant has not sufficiently substantiated the claim that he and his family may be subjected to acts of violence for article 3 of the Convention to become applicable. The mere fact that Rwandan nationals have been killed in Brussels in the past, as the complainant asserts, cannot establish that the complainant and his family are themselves also in danger, bearing in mind that the deaths of those individuals, with whom moreover they do not claim to have had any form of relationship, occurred several years ago.

4.7 The State party adds that Belgium is a State governed by the rule of law, with law enforcement agencies at its disposal that are able and ready to afford protection to persons in its territory. Accordingly, if the complainant and his family were to feel threatened in any way in Belgium, they should apply to the Belgian authorities for protection. It has not been shown that the authorities would not be able or ready to protect the complainant and his family if they were threatened. According to the State party, the news report referred to by the complainant (see para. 3.2 above) confirms that, in the event of the complainant and his family being threatened, the Belgian authorities would be willing and able to provide them with appropriate protection. The State party adds that no police force is able to ensure full and continued protection. Neither the geographical situation of Switzerland, nor its distance from Belgium, nor the fact that there are relatively few Rwandan nationals in Switzerland ensure that the complainant and his family would enjoy greater safety in Switzerland than in Belgium. In view of the complainant's former position in Rwanda, it is difficult to imagine that he would be able to hide from the Rwandan authorities for long. The complainant would probably continue to experience some level of risk, and there are grounds for believing that it would not be very difficult for his alleged enemies to find him in Switzerland, if they so wished. The State party concludes that the complainant has failed to show that he and his family would run a personal, real and serious risk of treatment contrary to the Convention if deported to Belgium.

4.8 With respect to the claim that the complainant and his family would risk being deported by Belgium to Rwanda, the State party submits that there is nothing to suggest that the Belgian authorities would not, as appropriate, give proper consideration to their asylum application, in accordance with the State party's laws and the applicable international conventions. In particular, the fact that the Belgian ambassadors to Ethiopia and Rwanda are angry with the complainant for using the visas that he had been granted to file an asylum request in Switzerland cannot alter this conclusion. It is hard to imagine that, if the Belgian authorities were to consider a request for protection by the complainant to be well founded, they would object to his having used a properly issued visa for reasons of safety.

4.9 According to the State party, the complainant claims for the first time in his submission to the Committee that he is subject to an arrest warrant issued through

INTERPOL at the request of the Rwandan authorities, who believe him to be in Belgium (see paras. 1.1 and 3.2). Also on this point, the State party points out that Belgium is a State governed by the rule of law, which gives due consideration to asylum applications and respects the principle of non-refoulement. Consequently, there is no indication that the Belgian authorities would not be able to assess the complainant's reasons for applying for asylum and to rule on the validity of the arrest warrant in question.

Complainant's comments on the State party's observations

5.1 The complainant presented his comments on the observations of the State party on 30 March 2016. He points out, first of all, that the State party has not disputed that he is a prominent politician or that he has held various official positions in Rwanda. As to the decision of the Committee cited by the State party, the complainant notes that a distinction should be made between his situation and that of the complainants in that case, who were merely Congolese junior officers serving in the police force and thus with no particular political profile.[4] The complainant, on the other hand, recalls that he was a member of parliament, then a minister several times and finally an ambassador until his departure from the country. He further recalls that he also co-founded a political party.

5.2 The complainant also notes that there have been numerous security failings in Belgium, as evidenced by the Brussels terrorist attacks of March 2016. He adds that recent events also bear witness to the risk faced by activists and political opponents in Belgium: the wife of the secretary of Forces démocratiques unifies-Inkingi, a Rwandan opposition political party in exile, was assaulted on 24 October 2009. The president of this party is currently serving a 15-year prison term in Rwanda; on 14 May 2011, a Belgian national of Rwandan origin living in Brussels was returned from London to Belgium on the grounds that he had been sent by the Government of Rwanda to kill two British citizens from Rwanda living in London; in August 2015, a Canadian journalist, Judi Rever, allegedly targeted because of her criticism of the Rwandan Government, was surprised to be met by security service officials at the reception desk of her hotel on her arrival in Brussels and to be provided with round-the-clock armed protection. The complainant also refers to a Radio France International report of 7 August 2015, according to which Faustin Twagiramungu, the former Rwandan Prime Minister and member of the opposition, was surprised to see members of the Belgian security services show up at his residence, without explanation. The complainant further cites a *Jeune Afrique* article of 10 September 2015, entitled "A Bruxelles, la méfiance règne dans la diaspora" (Mistrust prevails among the diaspora in Brussels);[5] he also refers to the case of an active member of the Congrès national rwandais — an opposition party in exile — who was allegedly assaulted by unknown persons in Brussels on 10 March 2016.

5.3 The complainant therefore concludes that the State party goes too far when it considers that Belgium has law enforcement agencies at its disposal that are able and ready to afford protection to persons in its territory. According to the complainant, the fact that the Belgian police have afforded protection to certain persons in its territory shows that Rwandan dissidents in Belgium face real and serious threats. The complainant also points out that, while special protection is a possibility, it is not desirable since it would constitute an ongoing burden and constraint for him and members of his family, including his minor daughter who would be enrolled at school. The complainant reiterates that he would be safer in Switzerland, since no Rwandan political party is represented there.

[4] *M.K. and B.B. v. Switzerland.*

[5] See http://www.jeuneafrique.com/mag/262364/societe/a-bruxelles-la-mefiance-regne-dans-la-diaspora-rwandaise.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee takes note of the State party's argument that the complaint is unfounded.

6.3 The Committee notes first of all that the complainant faces deportation to Belgium. Neither of the parties has implied that the human rights situation in Belgium is likely to give rise to a risk under article 3 of the Convention. Rather, the complainant claims that, because of the historical ties between Belgium and Rwanda and the presence in Belgium of a large Rwandan diaspora with disparate and opposing ethnic and political loyalties (persons involved in the Rwandan genocide; opponents of the regime; and supporters of the current regime), he and his family would be at risk of being subjected to violence by private actors, against whom the Belgian authorities would be unable to provide protection. The complainant has relied extensively on several cases in which the Belgian authorities provided individuals with special protection for their security and on examples of incidents in which Rwandan political opponents in exile and other public figures were allegedly assaulted or otherwise targeted by armed groups. According to the complainant, all these circumstances would make his and his family's return unlawful under article 3 of the Convention.

6.4 The Committee takes note of the complainant's argument that an international arrest warrant has been issued through INTERPOL by Rwanda, which raises the question of his possible chain refoulement to Rwanda by Belgium.

6.5 The Committee also takes note of the State party's argument that the complainant's claims have been carefully considered by the State Secretariat for Migration and the Federal Administrative Court, which found that the complainant and his family had failed to provide sufficient evidence to show that they would face a severe and substantiated risk of being subjected to prohibited treatment in Belgium and that the complainant had failed to adduce evidence sufficient to demonstrate that the Belgian authorities would not respect the principle of non-refoulement.

6.6 The Committee recalls that, in accordance with the Dublin Regulation, as the complainant and his family were granted Schengen visas by the Belgian authorities, Belgium is responsible for processing their asylum application. While taking note of the complainant's claims that an international warrant has been issued for his arrest by Rwanda, where he risks being hanged for high treason, the Committee considers that there is no evidence that Belgium will not consider his asylum application having regard to its obligations under the Convention, to which it is a party, and in particular to the principle of non-refoulement. The Committee considers that the complainant's arguments that his asylum application will not be examined properly are without merit, given that he has never filed an asylum application in Belgium.

6.7 The Committee further considers that, notwithstanding the examples given by the complainant, it has not been demonstrated that he and/or his family would face a serious and substantiated risk of being subjected to treatment prohibited under article 3 of the Convention. In particular, the complainant has failed to provide evidence to show that the Belgian authorities would have neither the will nor the ability to protect the complainant and/or his family, were they to face threats to their safety. The Committee therefore

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concludes that the complaint as submitted by the complainant is manifestly unfounded and thus inadmissible under article 22 of the Convention and rule 113 (b) of its rules of procedure.

7. The Committee consequently decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the complainant and to the State party.